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IN THE

Supreme Court of the United States

October Term, 1967
No. 378

P. S. O'REILLY, M.D.,
Petitioner and Appellant,

vs.

BOARD OF MEDICAL EXAMINERS OF THE STATE OF CALIFORNIA,
Defendant and Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of California.

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Petition for Writ of Certiorari to the Supreme Court of the State of California.

P. S. O'Reilly, M.D. respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of California entered in the above matter on April 19, 1967.

CITATION TO OPINION BELOW.

The opinion of the California Supreme Court is printed as Appendix A hereto and is reported at 66 Advance California Reports 391.

JURISDICTION.

The opinion and judgment of the California Supreme Court was entered on April 19, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED.

The question presented involves the Supremacy Clause of the United States Constitution (Article VI, Clause 2).

Dr. O'Reilly has been licensed as a medical doctor in the State of California, where he operates the California Emergency Hospital. Pursuant to the United States Information and Educational Exchange Act of 1948, the United States Department of State approved the California Emergency Hospital as a sponsor institution to conduct an Exchange Visitor Program under the Act and designated Dr. O'Reilly as the responsible officer. The Department of State qualified two foreign physicians, Daniel Sanchez, a Mexican national, and M. Ohnishi, a Japanese national, as exchange visitors under the Federal Program for the specific purpose of receiving training at the California Emergency Hospital under Dr. O'Reilly's supervision in "traumatic and reconstructive surgery, with special emphasis on reconstruction of the hand and forearm." Dr. Ohnishi was admitted for 18 months; Dr. Sanchez for up to five years.

As a part of such training, Drs. Ohnishi and Sanchez assisted Dr. O'Reilly in performing surgery, which constitutes the performance of a medical act under California law. Neither Dr. Sanchez nor Dr. Ohnishi was licensed to practice medicine in California, nor was either of them approved by the California Board of Medical Examiners as a foreign graduate student. The California Emergency Hospital was not approved by the California Board of Medical Examiners as a medical training institution. Dr. O'Reilly was accused and found guilty of unprofessional conduct in employing

and aiding and abetting unlicensed persons in the practice of medicine, in violation of California law.

The question presented is as follows: Where persons have been authorized by the Department of State to give and receive a course of instruction under an Exchange Visitor Program pursuant to the United States Information and Educational Exchange Act of 1948, may a State prohibit the parties from performing said Program unless they first obtain the discretionary approval of a State licensing board, and may a State punish such persons if they perform the Federal Program without first obtaining the approval of a State licensing board. Stated differently, is the authorization by the Department of State to conduct an Exchange Visitor Program to be subordinated to the discretionary approval of various State licensing boards?

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED.

The constitutional provision involved is the Supremacy Clause of the Constitution of the United States (Article VI, Clause 2).

The Federal Statute involved is the United States Information and Educational Exchange Act of 1948 (22 U.S.C. Section 1431-1480).

The Federal regulations involved are 22 Code of Federal Regulations, Chapter I, Part 63. They are printed as Appendix B hereto.

The State statutes involved are California Business and Professions Code Sections 2147, 2147.5, 2147.6, 2193 and 2392. They are printed as Appendix C hereto.

HOW THE FEDERAL QUESTION IS PRESENTED.

The Board of Osteopathic Examiners of the State of California issued an accusation against Dr. O'Reilly charging him with employing and aiding and abetting Drs. Sanchez and Ohnishi, unlicensed persons, in the practice of medicine in connection with the treatment of a specific patient on or about August 21, 1959.[1,2] At the administrative hearing, Dr. O'Reilly raised the Federal question and urged compliance with the Federal statute and regulations as a defense to the accusation [A. T., Vol. I, pp. 5, 9-21]. The Board of Medical Examiners, to whom the case was transferred, found him guilty of the accusation [C. T. pp. 18-21]. Petitioner filed a Petition for Writ of Mandate in the Los Angeles Superior Court under Code of Civil Procedure of California, Section 1094.5 [C. T. pp. 1-12]. The Superior Court affirmed the administrative decision and denied his Petition [C. T. pp. 62-63]. Petitioner appealed to the Court of Appeal of the State of California, which ruled adversely to him on the Federal question. He thereafter petitioned for and was granted a hearing in the California Supreme Court. The California Supreme Court thereafter rendered a

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[1]There was a second and unrelated charge which involved no Federal question and is not presented for consideration herein.

[2]A Reporter's Transcript of the administrative proceeding, together with exhibits introduced therein were introduced into evidence as exhibits in the Trial Court and were lodged with the California Court of Appeal and California Supreme Court as part of the record on appeal, together with the Clerk's Transcript and Reporter's Transcript of proceedings in the Trial Court. Exhibit references herein are to the exhibits introduced in the administrative hearing. Transcript references to the administrative hearing are designated "A. T.". References to the Clerk's Transcript are designated "C. T." and references to the Reporter's Transcript in the Trial Court are designated "R. T.". The entire record, including the above mentioned transcripts and exhibits, is filed in support of this Petition.

decision in which it determined the Federal question presented herein adversely to petitioner. As discussed more fully below, the California Supreme Court acknowledged that enforcement of the State medical liensing laws could impair and wholly defeat the Exchange Visitor Programs under which Drs. Ohnishi and Sanchez were admitted to the United States, but concluded that it was the intent of Congress to subordinate the Federal programs to the medical licensing laws of the various states. Dr. O'Reilly's Petition for Rehearing was denied.

The Federal question has been asserted by petitioner at all stages of this litigation.

STATEMENT OF CASE.

A. The United States Information and Educational Exchange Act of 1948.

1. The Statute.

The purpose of the U. S. Information Educational Exchange Act of 1948 is set forth in the Act as follows (22 U.S.C. Section 1431):

> "The Congress declares that the objectives of this chapter are to enable the Government of the United States to promote a better understanding of the United States in other countries, and to increase mutual understanding between the people of other countries. Among the means to be used in achieving these objectives are: . . .
>
> "(2) an educational exchange service to cooperate with other nations in
>
> "(a) the interchange of persons, knowledge and skill;

(b) the rendering of technical and other services;

(c) the interchange of developments in the field of education, the arts and sciences."

Implementation and enforcement of the program was delegated to the Secretary of State under 22 U.S.C. Section 1446 which provided in part as follows:

". . . The Secretary is authorized to provide for interchanges on a reciprocal basis between the United States and other countries of students, trainees, teachers, guest instructors, professors, and leaders in fields of specialized knowledge or skill and shall wherever possible provide these interchanges by using the services of existing reputable agencies which are successfully engaged in such activity. . . . When any country fails or refuses to cooperate in such program on a basis of reciprocity the Secretary shall terminate or limit such program, with respect to such country, to the extent *he deems to be advisable in the interests of the United States.* The persons specified in this section shall be admitted as non immigrant visitors for business under clause 2 of section 203 of Title 8, for such time and *under such conditions as may be prescribed by regulations promulgated by the Secretary of State* and the Attorney General . . ." (Emphasis added).

2. Federal Regulations.

The Federal regulations implementing the Exchange Visitor Programs appear as Appendix B hereto. Briefly summarized, the regulations required prospective exchange visitors and sponsor institutions to submit ap-

plications to the Secretary of State, accompanied by such supporting information as the Secretary should require in order to determine the eligibility of the applicants and the programs for exchange visitor status (22 C.F.R. § 63.2-63.5).

Section 63.3(a) provides in part

> ". . . the Secretary *may* require a sponsor to present any evidence of a documentary nature, e.g., program reports, institutional catalogs, letters of professional recognition, accreditation, or approval, *which he may consider necessary* in making his determination of the eligibility of the program to be designated as an Exchange Visitor Program." (Emphasis added).

Section 63.3(b) provides in part

> ". . . the Secretary *may in his discretion* designate the sponsor's program as an Exchange Visitor Program."

and

> "the Secretary *may in his discretion* revoke designation of an Exchange Visitor Program for any sufficient cause, including but not restricted to: (1) failure to maintain educational standards as established by competent professional agencies; (2) failure to submit reports on program operation when requested by the Secretary; (3) misuse of the Exchange Visitor Program." (Emphasis added).

B. Petitioner's Authorization Under the Exchange Visitor Program.

On June 20, 1957, the Department of State notified Dr. O'Reilly that the Glendale Emergency Hospital program was approved under the Exchange Visitor Program and that Dr. O'Reilly was designated as the responsible officer [see Ex. B-6]. On January 16, 1959, the Department of State acknowledged the change of name of Glendale Emergency Hospital to California Emergency Hospital [Ex. B-7].

C. Dr. Ohnishi's and Dr. Sanchez's Authorization Under the Exchange Visitor Program.

Prior to his admission to the United States under the Exchange Visitor Program, Dr. Ohnishi was a licensed medical doctor in Japan and was an instructor of surgery at Nakayama Surgical Department, School of Medicine, Chiba University. He was admitted to the United States under the Exchange Visitor Program for a period of 18 months for the express purpose of receiving training under Dr. O'Reilly's supervision, "in traumatic and reconstructive surgery, with special emphasis on reconsideration of the hand and forearm." [Exs. B-13, B-15, B-16 and B-18]. Dr. Sanchez was a licensed medical doctor in Mexico, and he was admitted to the United States under the Exchange Visitor Program for a period of five years for the purpose of receiving the identical training under the supervision of Dr. O'Reilly [Ex. B-19]

D. Compliance With the Exchange Visitor Program.

It was stipulated that the California Emergency Hospital and Dr. O'Reilly fully complied with all applicable regulations in accepting Drs. Ohnishi and Sanchez as trainees under the Exchange Visitor Program [A. T. Vol. I, p. 5, lines 18-20; Exs. B-15 to B-19]. It was further stipulated or was otherwise uncontroverted that their training was carried out under the immediate and personal instruction of Dr. O'Reilly; that Dr. O'Reilly was present at all times, and that Drs. Sanchez and Ohnishi were in fact assisting him in connection with the incident which forms the basis for the accusation of unprofessional conduct [A. T. Vol. I, pp. 20-21].

E. Pertinent California Law.

The California Emergency Hospital was not qualified by the California Board of Medical Examiners as an approved medical school or teaching hospital. Neither Dr. Ohnishi nor Dr. Sanchez was approved by the Board as qualified medical student, intern, resident or licensed doctor. They did not qualify under any of the following provisions of the California Business and Professions Code:

1. Section 2147, which provides an exemption from medical licensure to students "regularly matriculated in any legally chartered school *approved by the Board* from treating, without compensation to the student, the sick or afflicted as a part of a course of his study." (Emphasis added).

2. Section 2147.5, which permits graduates from *Board approved schools* to treat the sick and afflicted

as a part of a course of study *in a school approved by the Board* or as an intern in a hospital *approved* for the training of interns. This sections also permits graduates of schools *approved by the Board* to act as resident or assistant resident physicians in hospitals or public health departments *approved* for residencies provided that such resident or assistant resident shall qualify for and take the next succeeding examination for physicians and surgeons certificate or otherwise qualify for such certificate.

3. Section 2147.6, which applies to foreign post-graduate students, provides that the Board of Medical Examiners *may* allow a foreign physician to undertake post-graduate study in *an approved medical school* upon *approval* of his application *by the Board* for a period not in excess of one year[3].

4. Section 2193, which delineates the requirements for medical licensure for non-citizen graduates of foreign medical schools. Such an applicant must furnish documentary evidence *satisfactory to the Board* that he has completed medical studies and professional instruction equivalent to that required under California law; that he has received a medical diploma; that he is admitted to practice medicine in the country wherein the institution in which he has completed his course of professional study is located; and that the country in which he has been licensed to practice medicine will admit United States citizens to practice therein on a reciprocal basis. Upon fulfilling the foregoing requirements, the applicant must serve a two-year internship in the United States and pass written and oral examinations encompassing a broad range of medical topics. Section 2193

[3]In 1965, this one year period was changed to five years.

specifically authorizes the Board of Medical Examiners to disapprove any foreign medical school or deny any application if, *in the Board's opinion,* the foreign instruction was not equivalent to that required under California law.

As noted above, the California Emergency Hospital was not approved by the Board of Medical Examiners as a training institution, and Drs. Ohnishi and Sanchez neither applied for nor received the approval of the Board of Medical Examiners as foreign post-graduate students or as licensed physicians and surgeons.

F. The Accusation and Proceedings Against Dr. O'Reilly.

On September 12, 1962, the Board of Osteopathic Examiners of the State of California commenced disciplinary proceedings against Dr. O'Reilly by issuing an accusation charging him with employing, aiding and abetting Drs. Sanchez and Ohnishi, unlicensed persons, in the practice of a system or mode of treatment of the sick or afflicted in connection with a surgical operation performed on August 21, 1959 [C. T. pp. 14-16]. Dr. O'Reilly was found guilty of the charge and was placed on probation for five years and suspended from practice for 90 days [C. T. pp. 18-21]. He filed a Petition for Alternative and Peremptory Writs of Mandate in the Superior Court of the County of Los Angeles pursuant to California Code of Civil Procedure, Section 1094.5. An Alternative Writ was issued [C. T. pp. 1-13; 72-73], but was subsequently discharged [C. T. pp. 62-63]. On appeal, the Court of Appeal of the State of California affirmed the judgment. The California Supreme Court granted a

hearing on or about January 25, 1967.[4] On April 19, 1967, the California Supreme Court filed its decision, holding that Dr. O'Reilly's authorization under the Exchange Visitor Program did not relieve him of the obligation to obtain the discretionary approval of the California Board of Medical Examiners under applicable California law and that he was therefore guilty of the chage pertaining to Drs. Ohnishi and Sanchez.[5]

In its decision, the California Supreme Court recognized that a State law incompatible with Federal law cannot be enforced and that enforcement of the State medical licensing laws was in fact incompatible with the Exchange Visitor Programs being offered to Drs. Sanchez and Ohnishi, stating at page 396:

> "There can be no question that to conduct the Exchange Program in compliance with the State medical regulation would frustrate to some extent the Program's foreign policy objectives. Effective practical training in general and traumatic surgery requires some treatment of patients (see Sections 2147, 2147.5, which authorize undergraduate and post-graduate medical students to perform medical functions in the course of their study). Such treatment would be permissible if the foreign doctor were licensed in California (see Section 2193) or if the program were conducted under the auspices of an approved medical school in compliance with the detailed requirements of Sections 2147.5 and 2147.6. Either of these alternatives, however, would impose burdens on the

[4]A certified copy of the California Supreme Court's Order granting a hearing is set forth as Exhibit D hereto.

[5]By reason of Dr. O'Reilly's bona fides, the Supreme Court reversed the judgment of the Trial Court and remanded the matter to the Board of Medical Examiners for reconsideration of the penalty.

foreign visitors that might be out of proportion to the benefits that they could expect to receive under the limited Exchange Programs contemplated under the Federal statute. *Either alternative would also expose the foreign visitor to rejection by the State Board for various reasons.*[6] Although it thus appears that to comply with State law a foreign visitor must either refrain from practicing medicine or comply with burdensome State regulations, we do not believe that the Federal statute supersedes State regulation." (Emphasis added).

In order to uphold the State licensing laws, the California Supreme Court then went on to find in effect that Congress intended to subordinate the Exchange Visitor Programs to the licensing laws of the various states.

In his Petition for Rehearing, Dr. O'Reilly contended that neither the legislative history nor the language of the Information and Educational Exchange Act of 1948, nor the language of the regulations promulgated thereunder, support the California Supreme Court's conclusion that Congress intended to subordinate the Exchange Visitor Program to the licensing laws of the then 48 states. It was argued that, to the contrary, Congress clearly intended that the Exchange Visitor Programs, as instruments of United States foreign policy, were intended to prevail over conflicting State laws.

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[6]As noted elsewhere in this Petition, under California law, the training institution, the student applicant and foreign applicants for licensure, are subject to the *discretionary approval* of the California Board of Medical Examiners. The exercise of such discretionary power in a manner which could thwart implementation of a Federal Program was expressly rejected in *Sperry v. State of Florida*, 373 U.S. at 385, and in *Miller v. Arkansas*, 352 U.S. at 190.

REASONS FOR GRANTING WRIT.

A. In Holding That the Federal Exchange Visitor Programs Are to Be Subordinated to the Medical Licensing Laws of the State of California, the Decision of the California Supreme Court Conflicts With Prior United States Supreme Court Decisions Interpreting and Applying the Supremacy Clause.

Petitioner contends that the decision of the California Supreme Court is in irreconcilable conflict with an unbroken line of decisions by the United States Supreme Court commencing with *Gibbons v. Ogden,* 9 Wheat. 1, 211, 6 L. Ed. 23, through such recent decisions as *Sperry v. Florida Ex rel. Florida Bar,* 373 U.S. 79 and *Leslie Miller Inc. v. Arkansas,* 352 U.S. 187.

See also:

Free v. Bland, 369 U.S. 663;

Public Utility Commission of California v. United States, 355 U.S. 543.

Moreover, the foreign relations of the United States have always been recognized as "the one aspect of our Government that from the first has been most generally conceded imperatively to demand broad national authority."

See:

United States v. Pink, 315 U.S. 203, 232;

Hines v. Davidowitz, 312 U.S. 52.

Of course, the Exchange Visitor Programs provided for in the United States Information and Educational

Exchange Act of 1948 is by its terms an instrument of United States foreign policy.

Enforcement of the California State licensing laws in the present case necessarily conflicts with the Exchange Visitor Program under which Drs. Ohnishi and Sanchez were admitted to the United States. As noted above, this was recognized and conceded in the decision of the California Supreme Court. Under California law the Board of Medical Examiners of the State of California retains the discretionary authority to approve medical training institutions (Business and Professions Code Section 2147, 2147.5, 2147.6), foreign post-graduate students (Section 2147.6) and applicants for licensure as medical doctors (Section 2193).[7] Thus, under the decision of the California Supreme Court, even though the Secretary of State had approved the Exchange Visitor Program to be conducted at the California Emergency Hospital under the direction of Dr. O'Reilly and had approved Drs. Ohnishi and Sanchez as trainees under said program, the Board of Medical Examiners could nevertheless exercise its discretionary authority to totally defeat implementation of the program in California.

The decision of the California Supreme Court in this regard comes into direct conflict with recent deci-

[7]Under Section 2193, the California Board of Medical Examiners could not admit a foreign graduate to licensure in California unless the country in which he had been licensed granted reciprocity to United States citizens. This could conflict with the provisions of 22 U.S.C. 1446, which vested a discretionary authority in the Secretary of State to waive strict reciprocity requirements.

sions of the United States Supreme Court such as *Sperry v. Florida, supra,* 373 U.S. 379, and *Miller v. Arkansas, supra,* 352 U.S. 187. As stated in *Sperry v. Florida* at page 385:

> "A state may not enforce licensing requirements which, though valid in the absence of Federal legislation give 'the State's licensing board a virtual power of review over the Federal determination' that a person or agency is qualified and entitled to perform certain functions, or which impose upon the performance of activity sanctioned by Federal license additional conditions not contemplated by Congress."

Recognizing the application of the Supremacy Clause, and acknowledging that implementation of the California licensing laws could wholly defeat the Exchange Visitor Program in the present case, the California Supreme Court nevertheless has ruled that the State medical licensing laws shall prevail. The California Supreme Court accomplished this result by finding a Congressional intention that the Exchange Visitor Programs should be subordinated to the medical licensing laws of the State of California. It is petitioner's contention that this finding of Congressional intent by the California Supreme Court is in error. This is discussed in the next section.

B. The Purpose and Legislative History of the Information and Educational Exchange Act of 1948, the Language of the Statute and the Regulations Issued Thereunder Are Inconsistent With a Congressional Intent to Subordinate the Enforcement and Implementation of the Act to Conflicting State Licensing Laws.

As noted above, the California Supreme Court decision held that, by application of California law, the Board of Medical Examiners had the discretionary authority to totally thwart implementation of the Exchange Visitor studies of Drs. Ohnishi and Sanchez. Nevertheless, the California Supreme Court concluded that it was the intent of Congress that the California Board of Medical Examiners (and presumably State licensing boards in each of the other States) could exercise such discretion to defeat implementation of any program which did not meet with its approval. It is submitted that no support for such an intention on the part of Congress can be found in the language of the statute or in its legislative history. To the contrary, it clearly appears that Congress did not intend to have the Program subordinated to the licensing laws in the various States, but chose to delegate to the Secretary of State wide discretion with a view to developing broad-gauged national programs and policies.

Thus, 22 U.S.C. Section 1446 provides that the persons authorized to enter the United States under Exchange Visitor Programs shall be admitted ". . . for such time and under such conditions as may be prescribed by regulations promulgated by the Secretary of State and the Attorney General." No qualifying language appears which would indicate an intention to

subordinate this delegation of authority to the various licensing laws of the then 48 states.

Moreover, the legislative history of the Act recognizes a national need for uniformity of policy and administration, a requirement which this Court has recognized as indicative of a Congressional preemptive intent that the Federal statute shall supersede conflicting state laws (see *Campbell v. Hussey,* 368 U.S. 297).

A Congressional wish for uniformity of policy and centralization of administration is reflected throughout the legislative history of the statute. The following extracts are noted from the Senate Report (S.R. No. 811, 80th Cong. 2d Sess.):

1. At page 4, in noting a separation between Information and Educational Exchange activities, Senate Report 811 states:

> "7. The Secretary of State and the Head of Mission in each country are the proper responsible authorities for these programs. . . . However, both at home and abroad, Information and Educational Exchange work . . . should be kept as distinct as necessary but *under broad-gauged leadership and policies.* This should prove a convenience also in enlisting the private resources of this country in the cooperation of American citizens abroad.
>
> "Such is the clear intent of the present Bill and amendments. . . ." (Emphasis added).

2. The Senate Report continues at pages 4-5:

> "8. The Department of State is urged to take into account, in the development of these programs, not only the considerations of our foreign policy but also the great varieties of peoples, habits,

and cultures in the world and to plan such public relations programs accordingly, . . . every effort should be made to reach as many leaders and people as possible. Likewise, *leadership and policy guidance must be exercised, at home and abroad,* so that no unwarranted unbalance, due to bureaucratic or professional enthusiasms, occurs between Information and Educational Exchange work, or between the various means of communications and methods." (Emphasis added).

3. In connection with participation by other Government agencies, the Senate Report states in part at page 8:

". . . the amendments do not alter the intent of the Bill to state clearly that the Secretary of State is authorized to utilize the service, facilities and personnel of the other Government Agencies . . . *and that the responsibility for coordination rests with the Secretary of State.* Other Governmental Agencies have notable contributions to make to these programs. . . . However, this bill is not an excuse for other Governmental Agencies to overextend their activities . . ." (Emphasis added). "In the interest of efficient administration it is assumed that the President would delegate to the Secretary of State the authority to approve such activities. . . ."

4. The Senate Report further recognizes the possibility that errors will be committed in the administration of the Program and prescribes as a safeguard, not the innumerable licensing laws of the various states, but continuing Congressional scrutiny and the advice

and guidance of the Advisory Committee created by the Statute (22 U.S.C. 1466-1468). Thus, Senate Report 811 states at page 6:

> "If the programs are as energetic, creative, and courageous as we hope them to be, there will be mistakes which sometimes happen to be dramatic.[8] However, criticism which reflects perspective and judgment cannot but help the programs, and should be applied especially in detecting any persistent tendencies toward ineffectiveness, distortion, or partisanship."

At page 7, under the heading Important Controls and Safeguards in the Act, it is noted that reports must be sent to Congress twice a year on the activities and expenditures under the Program, including appraisals of the results of the Program in foreign countries, and that the legislation could be terminated by concurrent resolution of the Congress. Under this heading, further reference is made to the two Advisory Commissions established by the Act to assist in the formulation and recommendation to the Secretary of State of policies and programs for carrying out the Act, and to the fact that these Commissions are to report semiannually to the Congress.

Similar concern for uniformity of administration appears in the Floor debates (Vol. 94, p. 249, Cong. Rec., 80th Cong., 2nd Sess., 1948), and in the sub-

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[8]A similar expression of opinion appears in the House of Representatives' Report (H. R. No. 416, 80th Cong. 1st Sess.), at page 8.

sequent legislative history of the Act (see 1961 Code Cong. and Admin. News, pages 2767-2768).

It is further submitted that, in promulgating implementing regulations under the Act, the Secretary of State retained all of the discretionary powers vested in him by the Congress. Thus, the regulations require that an application for program designation and program sponsor shall furnish such information, including program reports, institutional catalogs, letters of professional recognition, accreditation or approval, as the Secretary of State "may consider necessary in making his determination of the eligibility of the program to be designated as an Exchange Visitor Program." (22 C.F.R. 63.3(a)); and that the Secretary may *in his discretion* designate the sponsor's program as an Exchange Visitor Program and may *in his discretion* revoke such designation for any sufficient cause (C.F.R. 63.3(b). Similar broad discretionary powers are retained with reference to other aspects of the program (C.F.R. 63.5-63.6).

It is submitted that the language of the Information and Educational Exchange Act of 1948, its legislative history, and the regulations promulgated under it, clearly disclose a Congressional intention that Exchange Visitor Programs approved by the Secretary of State should supersede conflicting licensing laws of the various states, and that Congress never intended that any Federal programs could be thus thwarted or defeated by State licensing agencies.

Conclusion.

The decision of the California Supreme Court recognizes that enforcement of the various California licensing laws concerning medical students and doctors and medical training institutions vests broad discretionary powers in the California Board of Medical Examiners by which the State Board could have wholly defeated the Exchange Visitor Programs of Drs. Ohnishi and Sanchez. Recognizing the rule that conflicting State laws must yield to Federal Law unless Congress otherwise indicates, the California Supreme Court read into the Information and Educational Exchange Act of 1948 a Congressional intent that the Federal Programs should be subordinated to the medical licensing laws of the State of California. It is submitted that a fair reading of the Federal Act, its legislative history and the regulations issued under it fail to disclose such an intent, but rather disclose a clear Congressional intention that the Federal Programs in this important field of foreign relations should be developed and implemented under broad national policies and on a uniform basis, objectives which cannot be reconciled with an intention that the Federal Programs should be subordinated to conflicting State laws.

For the foregoing reasons, it is respectfully submitted that a Writ of Certiorari should be granted.

Respectfully submitted,

KIRTLAND & PACKARD,
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